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BEFORE THE ARIZONA CORPORATION COMM.

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COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BOB STUMP

2010 DEC 15 P 2:50

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE FORMAL  
COMPLAINT OF CHARLES J. DAINS AGAINST  
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**NOTICE OF FILING  
INITIAL BRIEF OF THE ESTATE OF CHARLES J. DAINS**

The Estate of Charles J. Dains hereby files its Initial Brief in the above-captioned docket.

RESPECTFULLY SUBMITTED on December 15, 2010.

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Arizona Corporation Commission

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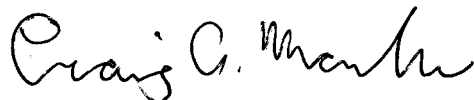
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25 By:



26 Craig A. Marks

BEFORE THE ARIZONA CORPORATION COMMISSION

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**INITIAL BRIEF OF THE ESTATE OF CHARLES J. DAINS**

**I. INTRODUCTION**

In the mid-1980 the family of Charles J. Dains ("Mr. Dains"),<sup>1</sup> along with other partners acquired an 80-acre parcel for two residential developments in the City of Avondale, Arizona ("Avondale"). The first development was known as Terra Mobile Ranchettes Estates ("Terra Ranchettes") and would consist of 83 permanent sites for manufactured homes.<sup>2</sup> The second development was known as Terra Twin Lakes Mobile Home Park ("Terra Twin Lakes"), which would be a 351-unit mobile home park.<sup>3</sup>

In 1985, Mr. Dains and his partners spent substantial sums of money to obtain a Certificate of Assured Water Supply, for engineering to plat Terra Ranchettes, and everything else necessary submit the subdivision plan to the State Real Estate Department for approval.<sup>4</sup> To obtain water service, Mr. Dains approached Rigby Water Company ("Rigby").<sup>5</sup> However, because of water-compliance issues, Rigby could not supply water to the development.<sup>6</sup>

<sup>1</sup> Mr. Dains died on November 18, 2009. Tr. at 23:19-20. On May 5, 2010, Mr. Dains' wife, Annavate V. Dains, was appointed Personal Representative for the Dains Estate. See copy of Letters of Personal Appointment of Personal Representative and Acceptance of Appointment of Personal Representative, filed with ACC Docket file on May 6, 2010.

<sup>2</sup> Exhibit Dains-1, Direct Testimony of Charles D. Dains, at 1:15-19.

<sup>3</sup> Exhibit Dains-1 at 2:1-5; Exhibit R-1 at RWC-8, p.7.

<sup>4</sup> Exhibit Dains-1 at 2, CDD-2; Exhibit R-15.

<sup>5</sup> Exhibit Dains-1 at 2.

<sup>6</sup> *Id.*

1 Consequently, Mr. Dains and his partners could not obtain approval for the new subdivision from  
2 the Arizona Real Estate Department.<sup>7</sup>

3 Because they could not develop the parcel until Rigby was able to resolve its compliance  
4 issues, the partners could not recover their engineering and other development costs.<sup>8</sup> Further,  
5 because the parcel was now assessed as developed land instead of raw land, property taxes  
6 increased significantly.<sup>9</sup>

7 Around 1993, the original partnership split-up.<sup>10</sup> A new partnership was formed in 1995,  
8 which included just Dains family members ("Dains Partnership"), to focus just on Terra  
9 Ranchettes.<sup>11</sup> Mr. Dains again approached Rigby, but was once again put off. Rigby was out of  
10 compliance again, this time because it did not have sufficient water storage for existing  
11 customers.<sup>12</sup>

12 In early 1994, Rigby entered into a consent decree with Maricopa County that required it  
13 to add 50,000 gallons of new water storage.<sup>13</sup> This put Rigby in a very difficult position, because  
14 Rigby could not fund this construction.<sup>14</sup>

15 At buildout, only about 20,000 gallons of new storage would be required for the Terra  
16 Ranchettes development.<sup>15</sup> However, Rigby demanded that the Dains Partnership construct  
17 50,000 gallons of storage before it would provide water service.<sup>16</sup>

18 Ultimately, Rigby and the Dains Partnership reached an agreement. If the Dains  
19 Partnership constructed the additional storage, Rigby would purchase the entire water

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<sup>7</sup> Exhibit Dains-1 at 2, CDD-2.

<sup>8</sup> Exhibit Dains-1 at 3:1-7; Tr. at 91:6-24.

<sup>9</sup> Tr. at 71:20-25.

<sup>10</sup> Tr. at 91.

<sup>11</sup> 1985 Terra Mobile Ranchettes Partnership Agreement and 1995 Amendment, filed October 4, 2010.

<sup>12</sup> Exhibit Dains-1 at 2:15-22; Tr. at 121-136.

<sup>13</sup> Exhibit Dains-9.

<sup>14</sup> Tr. at 124.

<sup>15</sup> Tr. at 83.

<sup>16</sup> Exhibit Dains-1 at 3:10-13.

1 infrastructure.<sup>17</sup> The price would be the actual cost of the infrastructure, to be paid annually over  
2 20 years.<sup>18</sup>

3 The Dains Partnership obtained the necessary Certificate of Approval to Construct in  
4 May 1996 from the Maricopa County Environmental Services Department.<sup>19</sup> Construction then  
5 began. Hilton Financial was the Construction Lender for the Dains Partnership, paying  
6 construction invoices as they were completed.<sup>20</sup> Copies of paid invoices were provided to  
7 Rigby.<sup>21</sup>

8 Construction was completed and Rigby accepted the water infrastructure in July 2007.<sup>22</sup>  
9 The first home sites were sold and occupied shortly afterward.<sup>23</sup>

10 In mid-1998, Rigby and the Dains Partnership finally began serious discussions  
11 concerning a Main Extension Agreement (“MXA”) for the development.<sup>24</sup> This was very  
12 unusual because MXAs are normally executed before construction begins, not one year after  
13 construction has been completed and accepted. On June 26, 1998, Rigby prepared and sent Mr.  
14 Dains an estimate of the refunds that the Dains Partnership could expect. Rigby estimated that  
15 the Dains Partnership would receive 20 annual refunds of \$12,225 each, for a total of \$244,500.<sup>25</sup>  
16 On July 21, 1998, Rigby then sent the Dains Partnership a draft Main Extension Agreement  
17 (“MXA”) for review.<sup>26</sup>

18 On February 19, 1999, Rigby sent Mr. Dains a final MXA for review and execution.<sup>27</sup>  
19 The copy sent included an Exhibit B (prepared by Rigby) that summarized the actual costs for  
20 the development, which totaled \$236,998.68.<sup>28</sup> This total cost, to be refunded over 20 years, was

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<sup>17</sup> Exhibit Dains-1 at 3:8 – 4:8; Tr. at 151:1 – 153:15; Exhibit Dains 11

<sup>18</sup> Exhibit Dains-1 at 3:18 – 4:8.

<sup>19</sup> Exhibits Dains-12 and Dains-13.

<sup>20</sup> Tr. at 150:1-7.

<sup>21</sup> Tr. at 45:12-16.

<sup>22</sup> Tr. at 84:25 – 85:4; 96:9-13.

<sup>23</sup> *Id.*

<sup>24</sup> Exhibit R-1 at RWC-3.

<sup>25</sup> Exhibit Dains-1 at CDD-4.

<sup>26</sup> Exhibit R-1 at RWC-3.

<sup>27</sup> Exhibit R-1 at RWC-4.

<sup>28</sup> *Id.* The cover letter states unequivocally: “We have attached as Exhibit B, a summary of the actual costs.” (Emphasis added.)

1 very close to the estimated total refund amount of \$244,500 provided to Mr. Dains the previous  
2 year. Based on this understanding, Mr. Dains signed the final MXA on March 2, 1999.

3 Arizona Administrative Code ("AAC") R-14-2-406 (M), requires water utilities to submit  
4 MXAs for Staff review and approval.<sup>29</sup> Rigby never made the required submission.<sup>30</sup>  
5 Consequently, as required by Rule AAC R14-2-406 (M), Rigby must refund to the Dains  
6 Partnership the entire amount of the advanced funds, less any refunds already made.<sup>31</sup>

7 The Dains Partnership executed the MXA in reliance on Rigby's estimate that they would  
8 receive refunds over 20 years of the total cost of the advanced infrastructure. This was  
9 consistent with their earlier discussions with Rigby concerning the purchase price for the water  
10 system. However, after 11 years, Rigby has actually refunded only \$27,261 of the \$237,000  
11 advanced.

<b>Year</b>	<b>Actual Refund</b>
2000	\$ 2,894.16
2001	\$ 1,924.00
2002	\$ 2,169.80
2003	\$ 2,292.54
2004	\$ 2,175.05
2005	\$ 2,388.01
2006	\$ 2,617.05
2007	\$ 2,770.45
2008	\$ 2,892.73
2009	\$ 2,716.59
2010	\$ 2,421.05

**Totals \$ 27,261.43**

Source: R-1 at RWC-9, 10

12 At this average refund rate of just \$2,478.31 per year,<sup>32</sup> Rigby will refund just \$49,566.20 after  
13 20 years,<sup>33</sup> or \$187,432.48 less than promised to the Dains Partnership.<sup>34</sup>

<sup>29</sup> Exhibit S-1 at 1:23-24.

<sup>30</sup> *Id.* at 2:6-10.

<sup>31</sup> *Id.* at 2:12-20.

<sup>32</sup>  $\$27,261.43 \div 11 = \$2,478.31$ .

<sup>33</sup>  $\$2,478.31 \times 20 = \$49,566.20$ .

<sup>34</sup>  $\$236,998.68 - \$49,566.20 = \$187,432.48$ .

1 Rigby has now agreed to be condemned and purchased by the City of Avondale at a price  
2 of \$2,560,000.<sup>35</sup> Rigby's total remaining plant in service is just \$114,295.84.<sup>36</sup> Current  
3 liabilities are just \$253,073.<sup>37</sup> Therefore, Rigby's parent company will receive an enormous  
4 windfall of almost \$2.2 million.<sup>38</sup>

5 The Dains Partnership provided Rigby a significant part of the customer base and  
6 infrastructure that made Rigby's enormous windfall possible. Rigby's has approximately 320  
7 customers.<sup>39</sup> Of those 320 customers, 83 are in Terra Ranchettes, so just over one quarter of  
8 Rigby's customer base was provided by the Dains Partnership. Further, the \$237,000 of plant  
9 advanced by the Dains Partnership is twice Rigby's remaining plant in service of \$114,000.

10 Based on their agreement with the Dains Partnership, Commission Rules, and equity,  
11 Rigby should immediately refund the Dains Partnership the remaining \$210,000 owed.<sup>40</sup> Even  
12 after the refund, Rigby's parent will still retain a \$2 million refund. Further, under the  
13 circumstances of case, reasonable interest should be paid.

## 14 **II. RIGBY'S COMPLIANCE PROBLEMS DAMAGED THE DAINS PARTNERSHIP**

15 In 1985, Mr. Dains and his partners funded the cost of engineering and other  
16 development costs necessary to obtain subdivision and zoning approval for Terra Ranchettes.<sup>41</sup>  
17 They also obtained a Certificate of Approval to Construct from the Maricopa County Health  
18 Department that same year.<sup>42</sup> Unfortunately, they could not proceed with construction because  
19 Rigby was not in compliance with the Arizona Safe Drinking Water Act.<sup>43</sup>

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<sup>35</sup> Tr. at 164.

<sup>36</sup> Rigby 2009 Annual Report to the Commission at 3.

<sup>37</sup> *Id.* at 7.

<sup>38</sup>  $\$2,560,000 - (\$114,295.84 + \$253,073) = \$2,192,631.16$

<sup>39</sup> Tr. at 130.

<sup>40</sup>  $\$236,998.68 - \$27,261.43 = \$209,737.25$ .

<sup>41</sup> Exhibit Dains-1 at 2:9-14, CDD-2; Tr. at 36, 70, 91.

<sup>42</sup> Exhibit Dains-12.

<sup>43</sup> Exhibit Dains-1 at CDD-2.

1 Rigby was again out of compliance in the early 1990s. On April 5, 1994, Maricopa  
2 County issued a Cease and Desist Order to Rigby because Rigby had "failed to provide adequate  
3 water storage."<sup>44</sup> This caused further delay.

4 The delay costs were enormous. Until the property was rezoned, property taxes were  
5 negligible; after the property was rezoned in 1985, property taxes went "through the roof."<sup>45</sup> The  
6 Partnership had to carry a high-interest note.<sup>46</sup> Until homes could be sold in 1997, there was no  
7 way to recover all the property taxes, interest, and other development costs.

8 The Rigby-caused delays were a huge financial setback for the Dains Partnership.<sup>47</sup> As a  
9 result, despite being able to sell all 83 lots, the Dains Partnership was never able to recover its  
10 investment.<sup>48</sup>

### 11 **III. RIGBY FAILED TO HONOR ITS PURCHASE AGREEMENT**

#### 12 **A. Rigby Forced Dains to Overbuild Capacity**

13 In 1990, the Arizona Corporation Commission Staff found that Rigby had a water-storage  
14 deficiency of approximately 20,000 gallons.<sup>49</sup> In 1991, the Commission authorized Rigby to  
15 collect a surcharge of \$2 per month per customer to fund construction of additional storage.<sup>50</sup>  
16 On April 5, 1994, Maricopa County issued a Cease and Desist Order to Rigby because Rigby had  
17 "failed to provide adequate water storage."<sup>51</sup> Rigby then entered into a consent decree with  
18 Maricopa County that required it to add 50,000 gallons of new water storage.<sup>52</sup> This put Rigby  
19 in a very difficult position, because Rigby could not fund this construction.<sup>53</sup>

20 At buildout, only about 20,000 gallons of new storage would be required for the Terra  
21 Ranchettes development.<sup>54</sup> Buildout would not occur until 2002.<sup>55</sup> Obviously, if Rigby could

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<sup>44</sup> *Id.* at CDD-3.

<sup>45</sup> Tr. at 71:17-25.

<sup>46</sup> Exhibit Dains-1, at 3:6-7.

<sup>47</sup> *Id.*

<sup>48</sup> Tr. at 28:18-24.

<sup>49</sup> Tr. at 123:18 – 124:2.

<sup>50</sup> Tr. at 124:4-11.

<sup>51</sup> Exhibit Dains-1 at CDD-3.

<sup>52</sup> Exhibit Dains-1 at CDD-3, Exhibit Dains-9.

<sup>53</sup> Tr. at 124.

<sup>54</sup> Tr. at 83.



1 get the Dains Partnership to construct and advance a new 50,000-gallon storage tank, Rigby's  
2 storage issues with the County would be resolved for several years.<sup>56</sup>

3 To resolve its storage requirements, Rigby demanded that the Dains Partnership construct  
4 50,000 gallons of storage before it would provide water service.<sup>57</sup> Given all the delay costs  
5 already incurred by the Dains Partnership, this was a clearly a huge concern for them.

6 **B. Rigby Agreed to Refund All Construction Costs Over 20 years**

7 Rigby's demand put the Dains Partnership between a rock and a hard place. The storage  
8 would far exceed the development's needs, but the Dains Partnership desperately needed to  
9 begin selling lots.<sup>58</sup> Ultimately, the Dains Partnership agreed to fund the cost of the additional  
10 capacity, but only with the understanding that Rigby would get all of its infrastructure costs  
11 refunded over 20 years.<sup>59</sup>

12 **C. Rigby Intends to Refund Only a Small Fraction of Construction Costs**

13 Actual costs for the development totaled \$236,998.68.<sup>60</sup> After 11 years, Rigby has  
14 actually refunded only \$27,261 of the \$237,000 advanced.

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<sup>55</sup> Tr. at 34:11-14.

<sup>56</sup> With the help of the customer surcharge, Rigby was finally able to fund and construct other storage-related facilities in 2001. Tr. at 133:1-10.

<sup>57</sup> Exhibit Dains-1 at 3:10-13.

<sup>58</sup> *Id.* at 3:12-13.

<sup>59</sup> Tr. at 77:1-4.

<sup>60</sup> Exhibit R-1 at RDC-5, Exhibit B.

Year	Actual Refund
2000	\$ 2,894.16
2001	\$ 1,924.00
2002	\$ 2,169.80
2003	\$ 2,292.54
2004	\$ 2,175.05
2005	\$ 2,388.01
2006	\$ 2,617.05
2007	\$ 2,770.45
2008	\$ 2,892.73
2009	\$ 2,716.59
2010	\$ 2,421.05

**Totals \$ 27,261.43**

Source: R-1 at RWC-9, 10

At this average refund rate of just \$2,478.31 per year,<sup>61</sup> Rigby will refund just \$49,566.20 after 20 years,<sup>62</sup> or \$187,432.48 less than promised to the Dains Partnership.<sup>63</sup>

#### **IV. RIGBY ILLEGALLY FAILED TO FILE THE MAIN EXTENSION AGREEMENT**

##### **A. Rigby Had All Cost Data Needed to File the MXA**

To review a filed MXA, the Commission Staff only needs to review estimated construction costs for reasonableness.<sup>64</sup> Rigby had more than this. Rigby had a summary of the actual construction costs, as shown on Exhibit B of the executed MXA.<sup>65</sup>

##### **B. Rigby Had the Approval to Construct Needed to File the MXA**

On May 2, 1996, the Dains Partnership obtained a reinstated Approval to Construct from Maricopa County ("ATC").<sup>66</sup> There was no reason for the Dains Partnership not to provide the ATC to Rigby. Further, Exhibits Dains-4 through Dains-7 are all available letters, where Rigby asked Mr. Dains to provide documents or take corrective action before Rigby would provide

<sup>61</sup> \$27,261.43 ÷ 11 = \$2,478.31.

<sup>62</sup> \$2,478.31 x 20 = \$49,566.20.

<sup>63</sup> \$236,998.68 - \$49,566.20 = \$187,432.48.

<sup>64</sup> Tr. at 187:13-17.

<sup>65</sup> Exhibit R-1 at RDC-4, RDC-5. The draft sent in 1998, included an Exhibit B (prepared by Rigby) that summarized the actual costs for the development, which totaled \$236,998.68.

<sup>66</sup> Exhibit Dains-13.

1 water service. Presumably, if Rigby needed a copy of the ATC, it would have asked for one.  
2 Nowhere in these documents did Rigby ask for a copy of the ATC. The reasonable conclusion is  
3 that Rigby already had a copy of the ATC.

4 Finally, as shown by Exhibit Dains-13, the County had reinstated the ATC in May 2006.  
5 Rigby did not execute the MXA three years later in May 2009.<sup>67</sup> Yet, Rigby never went to  
6 Maricopa County during these three years to look for a copy of the ATC.<sup>68</sup> This provides even  
7 more support for the conclusion that Rigby already had a copy of the ATC.

8 **C. Because Rigby Did Not File the MXA, It Owes All Remaining Advances to Dains**

9 Arizona Administrative Code ("AAC") R-14-2-406 (M) requires water utilities to submit  
10 MXAs for Staff review and approval.<sup>69</sup> Rigby never made the required submission.<sup>70</sup>  
11 Consequently, as required by Rule AAC R14-2-206 (M), Rigby must refund to the Dains  
12 Partnership the entire amount of the advanced funds, less any refunds already made.<sup>71</sup>

13 **V. THE COMMISSION SHOULD NOT UNJUSTLY ENRICH RIGBY'S**  
14 **CORPORATE PARENT**

15 Rigby is owned entirely by First National Management Company.<sup>72</sup> When the  
16 condemnation is completed, First National will own a company with no assets but the  
17 condemnation award.<sup>73</sup>

18 Rigby has now agreed to be condemned and purchased by the City of Avondale at a price  
19 of \$2,560,000.<sup>74</sup> Rigby's total remaining plant in service is just \$114,295.84.<sup>75</sup> Current  
20 liabilities are just \$253,073.<sup>76</sup> Therefore, First National Management will receive an enormous  
21 windfall of almost \$2.2 million.<sup>77</sup>

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<sup>67</sup> R-1 at RWC-5, signature page.

<sup>68</sup> Tr. at 115:14-16.

<sup>69</sup> Exhibit S-1 at 1:23-24.

<sup>70</sup> *Id.* at 2:6-10.

<sup>71</sup> *Id.* at 2:12-20.

<sup>72</sup> Tr. at 135:4-7.

<sup>73</sup> Tr. at 164:8-18

<sup>74</sup> Tr. at 164.

<sup>75</sup> Rigby 2009 Annual Report to the Commission at 3.

<sup>76</sup> *Id.* at 7.

<sup>77</sup>  $\$2,560,000 - (\$114,295.84 + \$253,073) = \$2,192,631.16$

1 The Dains Partnership provided Rigby a significant part of the customer base and  
2 infrastructure that made Rigby's enormous windfall possible. Rigby's has approximately 320  
3 customers.<sup>78</sup> Of those 320 customers, 83 are in Terra Ranchettes, so just over one quarter of  
4 Rigby's customer base was provided by the Dains Partnership. Further, the \$237,000 in plant  
5 advanced by the Dains Partnership is twice Rigby's remaining plant in service of \$114,000.

6 Based on their agreement with the Dains Partnership, on Commission Rules, and on  
7 equity, Rigby should immediately refund the Dains Partnership the remaining \$210,000 owed.<sup>79</sup>  
8 Even after the refund, Rigby's parent would still keep a \$2 million windfall.

9 If Rigby does not make this refund, it would clearly be unjustly enriched.

10 **VI. THE COMMISSION WILL LOSE JURISDICTION OVER RIGBY**

11 The Arizona Constitution defines "public service corporations" as follows: "All  
12 corporations other than municipal engaged ... in furnishing water for irrigation, fire protection,  
13 or other public purposes ... shall be deemed public service corporations."<sup>80</sup> The Constitution  
14 goes on to grant the Corporation Commission wide regulatory authority over the rates charged  
15 and services provided by public service corporations."<sup>81</sup>

16 In Docket No. W-01808A-10-0390, Rigby has applied for approval to transfer its assets  
17 to the City of Avondale and to extinguish its Certificate of Convenience and Necessity  
18 ("CC&N").<sup>82</sup> Once the Commission provides this approval, Rigby will no longer own any  
19 utility assets and will have no obligation or authority to provide water-utility service. At that  
20 time, Rigby will cease to be a public service corporation and the Commission will lose all  
21 jurisdiction over it.

22 **VII. INTEREST ON THE UNREFUNDED BALANCE IS APPROPRIATE**

23 Interest on the unrefunded balance is appropriate for two reasons.

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<sup>78</sup> Tr. at 130.

<sup>79</sup> \$236,998.68 - \$27,261.43 = \$209,737.25.

<sup>80</sup> Const. Art. 15, Sec. 2.

<sup>81</sup> Const. Art. 15, Sec. 3.

<sup>82</sup> The Commission issues a CC&N to authorize a company to provide service as a public service corporation.

1 First, Rigby's refunds have been grossly deficient. The Dains Partnership expected to be  
2 refunded \$236,998.68 over 20 years, or approximately \$11,850 per year. Rigby has been  
3 providing refunds for 11 years, so it should have refunded \$130,350 to the Dains Partnership by  
4 now. Instead, as calculated above, Rigby has refunded just \$27,261.43. Interest is appropriate to  
5 compensate the Dains Partnership for the lengthy refund delays.

6 Second, Rigby failed to file the MXA in 1999, when it was executed. The Commission  
7 Rule is very clear: "Where agreements for main extensions are not filed and approved by the  
8 Utilities Division, the refundable advance shall be immediately due and payable to the person  
9 making the advance."<sup>83</sup> By a fair reading of the rule, Rigby paid the Dains Partnership the  
10 \$236,998.68 refundable advance no later than the year 2000. It will be 2011 before this case is  
11 decided. Therefore, eleven years of interest is needed to put the Dains Partnership in the same  
12 position that it would have been if Rigby had complied with the Commission Rule.

13 An appropriate interest rate would be the rate Rigby charges its customers for past-due  
14 charges, which the Dains Partnership believes is 1.5% per month. Exhibit A to this Brief is copy  
15 of a spreadsheet which calculates an appropriate overall refund, together with interest. The  
16 remaining amount owed is \$209,727.25. With interest at 1.5% per month, the total amount owed  
17 by Rigby to the Dains Partnership is \$364,583.09.

## 18 **VIII. CONCLUSION**

19 Because of Rigby's longstanding water compliance issues, the Dains Partnership incurred  
20 substantial delay costs. To avoid further delays, the Dains Partnership agreed to help Rigby get  
21 in compliance by constructing an oversized water-storage tank. In return, Rigby agreed to refund  
22 all water-infrastructure costs over 20 years.

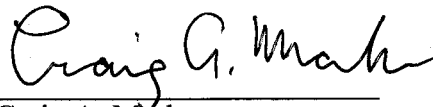
23 Rigby has failed to provide the agree-upon refunds. Rigby also failed to file the MXA  
24 with the Commission for approval, so it is required to immediately refund all advanced  
25 infrastructure costs.

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<sup>83</sup> AAC R14-2-406(M). Emphasis added.

1 Rigby has now agreed to be acquired by the City of Avondale for \$2.56 million, a  
2 tremendous windfall. It would be unjust to allow Rigby to be enriched by this amount, while  
3 allowing Rigby to disregard both its agreement with the Dains Partnership and the consequences  
4 of failing to file the MXA. Therefore, the Estate of Charles J. Dains asks the Commission to  
5 order Rigby to pay it the sum of \$209,727.25, together with interest at 1.5% per month, for a  
6 total of \$364,583.09.

7 RESPECTFULLY SUBMITTED on December 15, 2010.  
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# Refund Calculation Worksheet

Exhibit A

	A	B	C	D	E	F	G	H
1								References
2						\$ 236,988.68		
3						\$ 11,849.43		[F2/Z0]
4								
5	Year	Refund Due	Actual Refund	Yearly Refund Deficiency	Cumulative Refund Deficiency (with interest)	Annual Interest at 1.5% per month (Assessed on prior year's balance)		
6	2000	\$ 11,849.43	\$ 2,894.16	\$ 8,955.27	\$ 8,955.27	\$ -		
7	2001	\$ 11,849.43	\$ 1,924.00	\$ 9,925.43	\$ 18,880.71	\$ 1,751.81		
8	2002	\$ 11,849.43	\$ 2,169.80	\$ 9,679.63	\$ 30,312.16	\$ 3,693.41		
9	2003	\$ 11,849.43	\$ 2,292.54	\$ 9,556.89	\$ 43,562.46	\$ 5,929.61		
10	2004	\$ 11,849.43	\$ 2,175.05	\$ 9,674.38	\$ 59,166.45	\$ 8,521.61		
11	2005	\$ 11,849.43	\$ 2,388.01	\$ 9,461.42	\$ 77,149.49	\$ 11,574.03		
12	2006	\$ 11,849.43	\$ 2,617.05	\$ 9,232.38	\$ 97,955.90	\$ 15,091.84		
13	2007	\$ 11,849.43	\$ 2,770.45	\$ 9,078.98	\$ 122,126.73	\$ 19,161.95		
14	2008	\$ 11,849.43	\$ 2,892.73	\$ 8,956.70	\$ 150,245.39	\$ 23,890.21		
15	2009	\$ 11,849.43	\$ 2,716.59	\$ 9,132.84	\$ 183,268.44	\$ 29,390.73		
16	2010	\$ 11,849.43	\$ 2,421.05	\$ 9,428.38	\$ 222,087.55	\$ 35,850.64		
17								
18	Totals		\$ 27,261.43			\$ 154,855.84		
19								
20								
21								
22								
23								

Cumulative Interest Owed \$ 154,855.84 [Cell F17]  
 Remaining Refund Owed \$ 209,727.25 [F2-C18]  
 Total Owed to Dains Estate \$ 364,583.09 [G19+G20]